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OFFICE OF PETITIONS

In re Application of :
Quijano et al. :
Application No. 09/605,118 : DECISION ON PETITION
Filed: 28 June, 2000 :
Atty Docket No. P-10220.01 :

This is a decision on the petition filed on 4 May, 2005, under 37 CFR 1.137(b)¹, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 19 November, 2004, for failure to file a proper reply to the final Office action mailed on 18 August, 2004, which set a three (3) month shortened statutory period for reply. On 18 November, 2004, petitioners filed an amendment after final rejection. The amendment did not place the case in *prima facie* condition for allowance, however,

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

and petitioners were so notified in the Notice of Abandonment mailed on 4 March, 2005.

Petitioners have filed a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

As the three (3) month extension of time received on 4 May, 2005, was filed outside of the extendable period for reply to the Notice mailed on 18 August, 2004, this extension of time is unnecessary and will be credited to counsel's deposit account, No. 13-2546, as authorized on the fee transmittal sheet filed with the present petition.

This application is being referred to Technology Center Art Unit 3738 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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